

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Aircraft Holdings, LLC,

Plaintiff,

v.

Case No. 11-cv-11068

Mzilikazi G. Khumalo,

Honorable Sean F. Cox

Defendant.

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**OPINION AND ORDER**  
**DISMISSING PLAINTIFF AIRCRAFT HOLDINGS, LLC'S CLAIMS WITHOUT**  
**PREJUDICE FOR FAILURE TO PROSECUTE**

On March 15, 2011, Aircraft Holdings, Inc. ("the Plaintiff") filed this action against Defendant Mzilikazi G. Khumalo, a citizen of South Africa. (D.E. No. 1).

A summons was issued on March 16, 2011, but the Defendant was never served.

On July 20, 2011, the Court issued an order to show cause why this action should not be dismissed for failure to prosecute. (D.E. No. 3.)

On that same day, the Plaintiff filed a an Ex Parte Motion to Approve Alternative Service of Process and to Issue Letters Rogatory to effectuate service in South Africa. (D.E. No. 5).

On August 8, 2011, the Plaintiff responded to the show cause order by asserting that it had retained the services of an international process server. (D.E. No. 6.) The response further requested an order from the Court "requesting the assistance of South African judicial authorities in obtaining service of the Pleadings." (*Id.* at 1.)

On August 17, 2011, the Court referred this matter to Magistrate Judge Michael J.

Hluchaniuk. (D.E. No. 7.)

On August 31, 2011, Magistrate Hluchaniuk issued an Order Granting the Plaintiff's Ex Parte Motion to Approve Alternative Service of Process and to Issue Letters Rogatory. (D.E. No. 8).

That same day, Magistrate Hluchaniuk also issued a Request for International Judicial Assistance ("the letter rogatory"). (D.E. No. 9).

On March 5, 2012, this Court entered a Show Cause Order, stating that this action would be dismissed for failure to prosecute and/or for failure to effect timely service, if the Plaintiff does not show cause in writing on or before March 12, 2012. (D.E. No. 10.)

In its Response, the Plaintiff requested "that the Court not dismiss this case on the basis that the Plaintiff has taken reasonable steps to serve the Defendant using the appropriate means of service on a foreign defendant located in South Africa, and requests that the Court allow the diplomatic letters rogatory process to run its course." (D.E. No. 11, at 3.)

The Court let the letters rogatory process run its course by not dismissing this action at that time.

On January 29, 2013, the Court filed its "3RD Order to Show Cause Why Plaintiff's Complaint Should Not Be Dismissed for Failure to Prosecute and/or Failure to Serve." (D.E. No. 12.) In that order, the Court stated as follows:

To date, . . . the Plaintiff has not served the Defendant. As the **TWO YEAR ANNIVERSARY** of this action is fast approaching, this Court is concerned by the failure to serve the Defendant. Unless the Plaintiff offers sufficient justification, this action will be dismissed. (*Id.*)

Accordingly, the Plaintiff is **ORDERED TO SHOW CAUSE**, in writing, no later than **March 1, 2013**, why its claims against Defendant Mzilikazi G. Khumalo should not be dismissed for failure to prosecute and/or for failure to effect timely service.

(*Id.* at 2.)

The Plaintiff filed its response, on March 5, 2013, which is 4 days after the deadline date set by the Court in its order. (D.E. No. 13.) In its response, the Plaintiff essentially repeated many of the same assertions that it made in his previous two responses. The Plaintiff also included an email from Matthew W. Heron, who works for the international process server that the Plaintiff has employed, asserting “to date [the U.S. Department of State] . . . no word from South Africa relating to this request for service.” (D.E. No. 13-1, at 1.) In his response, the Plaintiff also stated that “[i]t is the experience of the International Division of Civil Action Group, Ltd., that service of process via the letter rogatory method in South Africa can take anywhere from six months to a year, and oftentimes longer.” (*Id.* at 2.)

Here, it has been more than one year and six months after the letter rogatory was issued by Magistrate Judge Hluchaniuk on August 31, 2011, and almost two-years since the Complaint was filed on March 15, 2011.

Accordingly, **IT IS ORDERED** that Plaintiff Aircraft Holding LLC’s claims are hereby **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

**IT IS SO ORDERED.**

S/Sean F. Cox  
Sean F. Cox  
United States District Judge

Dated: March 7, 2013

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 7, 2013, by electronic and/or ordinary mail.

S/Jennifer McCoy  
Case Manager